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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,082	01/21/2005	Ulrich Clemens Dahn	LU 6039 (US)	7572
34872	7590	02/18/2009		
Basell USA Inc. Delaware Corporate Center II 2 Righter Parkway, Suite #300 Wilmington, DE 19803			EXAMINER NUTTER, NATHAN M	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			02/18/2009 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/522,082

**Applicant(s)**

DAHN ET AL.

**Examiner**

Nathan M. Nutter

**Art Unit**

1796

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4, 5, 8, 10-12, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, 8, 10-12, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/888)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 8, 10-12, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Ueda et al (EP 0 704 463), cited by applicants.

Note paragraphs [0008], [0100]-[0112], [-126]-[0130], [0136]-[0145] and [0149]-[0150].

Claims 1, 2 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsunaga et al (EP 0 792 914), cited by applicants.

Note paragraphs [0011], [0022]-[0030], [0056]-[0062], [0073]-[0078] and [0080].

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 5, 7, 8, 10-12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ueda et al (EP 0 704 463).

The reference to Ueda et al teaches the production of a polyolefin composition that may comprise a propylene homopolymer with an ethylene copolymer having more an ethylene content that may be greater than 95% by weight paragraph [0145], as recited herein. The reference teaches addition of the third resin, recited in claims 7 and 14 at paragraphs [0126] et seq.. The reference teaches the polymerizations to occur in the gas phase and under pressures and temperatures that embrace those taught herein. See paragraphs [0107] and [0143]. The manipulation of pressure, as recited in instant claim 5 would be an obvious step to a skilled artisan in order to change reaction vessels in the sequence. The order of the steps may be changeable as taught by the reference at paragraph [0008]. Further, the crystallinity of the third resin component, due to the relative % by weight amounts of comonomer would be expected to produce a polymer having a higher branching distribution, and thus, be less crystalline, as recited in claim 7. Nothing unexpected has been shown on the record.

### ***Response to Arguments***

Applicant's arguments filed 2 January 2009 have been fully considered but they are not persuasive.

With respect to the rejection of claims 1, 2, 4, 8, 10-12, 14 and 15 under 35 U.S.C. 102(b) as being anticipated by Ueda et al (EP 0 704 463), the reference clearly shows the first step homopolymerization of propylene at paragraphs [0100] and [0110] as

previously pointed out by the Examiner, which state "(i)n the step (a), (i) propylene is homopolymerized," and "(t)he propylene (co)polymer (which is not a disclosure of only "copolymer") is particularly preferably a propylene homopolymer," respectively. Further, the Examiner has pointed to paragraph [0145] for the ethylene copolymer, which step is subsequent to the first step. This passage discloses an ethylene content of "not less than 90 mol%, preferably 90 to 98 mol%," which clearly reads on the claimed copolymer of ethylene. Applicants choose to ignore the teachings of the reference.

With respect to the rejection of claims 1, 2 and 10-12 under 35 U.S.C. 102(b) as being anticipated by Matsunaga et al (EP 0 792 914), applicants, again, choose to omit teachings of the reference. Again, it is pointed out the production of the propylene homopolymer at paragraph [0022] as the first polymerization step, followed by the ethylene copolymer at paragraph [0056] with ethylene present at 95 mol%, as herein claimed. The reference is taken for the entirety of its teachings.

With regard to the rejection of claims 1, 2, 4, 5, 7, 8, 10-12, 14 and 15 under 35 U.S.C. 103(a) as being unpatentable over Ueda et al (EP 0 704 463), applicants center the argument at the point of anticipation, as already addressed, above, restating the arguments of the rejection under 35 U.S.C. 102(b) and, concluding "nor is there is (sic), nor would there have been any suggestion or motivation to modify the various polymer components disclosed in Ueda, et al. in an attempt to arrive at Applicant's currently claimed process." Applicants provide no reasoning or evidence as to why this conclusion was made.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nathan M. Nutter/  
Primary Examiner, Art Unit 1796

nmn

14 February 2009